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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 FEDERAL HOME LOAN MORTGAGE
12 CORPORATION,

13 Plaintiff,

14 vs.

15 ROBERT TORAL; ROSEANN
16 COVARRUBIAS; and DOES 1-10,
inclusive,

17 Defendants.

CASE NO. 12cv2986-WQH-DHB
ORDER

18 HAYES, Judge:

19 The matters before the Court are the Motion to Remand (ECF No. 2) filed by Plaintiff
20 Federal Home Loan Mortgage Corporation and the Motion to Dismiss (ECF No. 4) filed by
21 Defendant Roseann Covarrubias.

22 **BACKGROUND**

23 On December 3, 2012, Plaintiff Federal Home Loan Mortgage Corporation initiated this
24 action by filing a Complaint for Unlawful Detainer Following Foreclosure Sale in the Superior
25 Court of California, County of San Diego, where it was assigned case number 37-2012-
26 00047677-CL-UD-CTL. (ECF No. 1-6 at 8-11). The Complaint alleges that Plaintiff
27 purchased real property located at 247 Elm Avenue, Chula Vista, California at a foreclosure
28 sale. The Complaint alleges that Plaintiff served Defendants with written notice requiring
them to vacate the property, and that Defendants have failed to vacate the property. The
Complaint alleges a single claim for unlawful detainer under California law, and seeks

1 possession of the property and damages that “do[] not exceed \$10,000.” *Id.* at 8.

2 On December 16, 2012, Defendants removed the action to this Court. (ECF No. 1).
3 The Notice of Removal asserts that removal is based upon diversity, federal question, and
4 supplemental jurisdiction. *See id.* at 6-8.

5 On January 4, 2013, Plaintiff filed the Motion to Remand. (ECF No. 2). On January
6 28, 2013, Defendant Covarrubias filed an opposition.¹ (ECF No. 8). On January 29, 2013,
7 Plaintiff filed a reply. (ECF No. 9).

8 On January 4, 2013, Defendant Covarrubias filed the Motion to Dismiss for failure to
9 state a claim. (ECF No. 4). On January 9, 2013, Plaintiff filed an opposition. (ECF No. 6).

10 DISCUSSION

11 Plaintiff contends that the Court does not have subject-matter jurisdiction over this
12 action and that it should be remanded. (ECF No. 2-1). Plaintiff contends that “there is no
13 federal question involved in a state court unlawful detainer case, even assuming the Defendant
14 intends to asse[r]t a federal defense to the underlying state law claim....” *Id.* at 2. Plaintiff
15 contends that the Court lacks diversity jurisdiction because the complaint alleges an amount
16 in controversy of less than \$10,000.00 and the Notice of Removal does not allege the
17 citizenship of Plaintiff. *Id.* at 6.

18 Defendant Covarrubias asserts that the Notice of Removal contains a typographical
19 error and that Plaintiff is misidentified.² (ECF No. 8 at 11). Defendant Covarrubias asserts
20 that, if the Court looks past the typographical error, the Notice of Removal alleges that
21 Defendants are citizens of California and that Plaintiff is a resident of Virginia. *Id.* at 11.
22 Defendant Covarrubias contends that the Notice of Removal demonstrates, by a preponderance
23 of the evidence, that the amount in controversy exceeds \$75,000 because Plaintiff “seeks
24 possession of a home that is encumbered by a Note and Deed of Trust that exceeds \$300,000
25 dollars....” *Id.* at 12. Defendant Covarrubias contends that the Notice of Removal alleges a

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27 ¹The docket reflects that Defendant Robert Toral has not filed an opposition to the
Motion to Remand (ECF No. 2).

28 ²The Notice of Removal states, in pertinent part: “The Removed Plaintiff, CITIBANK,
is a resident of a state of Virginia.” (ECF No. 1 at 6).

1 federal question “[b]ecause this removed action is a compulsory counterclaim to [a related case
2 filed by Defendant Covarrubias in this Court]....” *Id.* at 14.

3 A defendant may remove a civil action from state court to federal court pursuant to the
4 general removal statute, based on either federal question or diversity jurisdiction. *See* 28
5 U.S.C. § 1441. Federal question jurisdiction may not “rest upon an actual or anticipated
6 counterclaim.” *Vaden v. Discover Bank*, 129 S. Ct. 1262, 1272 (2009); *see also id.* at 1273
7 (“[C]ounterclaims, even if they rely exclusively on federal substantive law, do not qualify a
8 case for federal-court cognizance.”). Subject-matter jurisdiction under 28 U.S.C. § 1332
9 requires complete diversity of citizenship and an amount in controversy in excess of \$75,000.
10 *See* 28 U.S.C. § 1332(a)(1). “[D]iversity of citizenship requires that no defendant have the
11 same citizenship as any plaintiff.” *Tosco Corp. v. Communities for a Better Env’t*, 236 F.3d
12 495, 499 (9th Cir. 2001). The amount in controversy is determined from the allegations or
13 prayer of the complaint. *See St. Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 289
14 (1938). “Where it is not facially evident from the complaint that more than \$75,000 is in
15 controversy, the removing party must prove, by a preponderance of the evidence, that the
16 amount in controversy meets the jurisdictional threshold.” *Matheson v. Progressive Specialty*
17 *Ins. Co.*, 319 F.3d 1089, 1090 (9th Cir. 2003) (citing, *inter alia*, 28 U.S.C. § 1441(a)). “The
18 removal statute is strictly construed, and any doubt about the right of removal requires
19 resolution in favor of remand.” *Moore-Thomas v. Alaska Airline, Inc.*, 553 F.3d 1241, 1244
20 (9th Cir. 2009) (citation omitted). The presumption against removal means that “the defendant
21 always has the burden of establishing that removal is proper.” *Id.*


22 In this case, “it is not facially evident” from the state court complaint – which demands
23 an amount “not exceed[ing] \$10,000” – that the amount in controversy requirement is satisfied.
24 *Matheson*, 319 F.3d at 1090; ECF No. 1-6 at 8. The Court finds that the Notice of Removal
25 has failed to “prove, by a preponderance of the evidence, that the amount in controversy meets
26 the jurisdictional threshold.” *Matheson*, 319 F.3d at 1090. The Deed of Trust indicates that
27 Defendants borrowed \$399,900.00 in order to purchase the real property at issue in this case
28 (ECF No. 1-4 at 35-36); however, in unlawful detainer actions, the amount of damages sought

1 in the complaint, not the value of the subject real property, determines the amount in
 2 controversy. *See Evans v. Superior Court*, 67 Cal. App. 3d 162, 170-71 (1977) (“[I]n a
 3 summary proceeding for unlawful detainer ‘the right to possession alone was involved, and the
 4 broad question of title could not be raised and litigated by cross-complaint or affirmative
 5 defense.’ ... Real parties are not left without a remedy. The issues which they seek to litigate
 6 can be pursued by way of quiet title actions.”).³ To the extent Defendant Covarrubias contends
 7 that she has a defense to the unlawful detainer action grounded in federal law, “the existence
 8 of a defense based upon federal law is insufficient to support jurisdiction.” *Wayne v. DHL*
 9 *Worldwide Express*, 294 F.3d 1179, 1183 (9th Cir. 2002) (citing *Franchise Tax Bd. v. Constr.*
 10 *Laborers Vacation Trust*, 463 U.S. 1, 10-12 (1983)). The Court concludes that this action must
 11 be remanded for lack of subject-matter jurisdiction.

12 CONCLUSION

13 IT IS HEREBY ORDERED that the Motion to Remand (ECF No. 2) is GRANTED.
 14 Pursuant to 28 U.S.C. § 1447(c), this action is REMANDED for lack of subject-matter
 15 jurisdiction to the Superior Court of California, County of San Diego. The Motion to Dismiss
 16 is DENIED as moot. (ECF No. 4).

17 DATED: April 9, 2013

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 19 **WILLIAM Q. HAYES**
 20 United States District Judge

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 28 ³The Court’s docket reflects that Defendant Covarrubias has filed an action against Plaintiff to quiet title. *See Covarrubias v. Federal Home Loan Mortgage Corporation, et al.*, 12-CV-2775-WQH-DHB (S.D. Cal.).